Texas, was administered the oath, after which he submitted his resignation from the Senate due to his election as Vice President of the United States.

Following his resignation, there were laid before the Senate a letter and telegram from the Governor of Texas appointing Mr. William A. Blakley to fill the vacancy created by Mr. Johnson's resignation. After the receipt of the communications, Mr. Blakley, who was present, was administered the oath.

**§ 9.16 The Speaker laid before the House a letter of resignation from a Member who had been appointed to the Senate to fill the vacancy caused by the resignation of a Senator whose term of office was about to expire.**

On Dec. 31, 1970, the Speaker laid before the House the resignation of Mr. William V. Roth, Jr., of Delaware. Mr. Roth had been appointed by the Governor to fill a vacant senatorial seat and was administered the oath in the Senate on Jan. 2, 1971, although the term of office for the seat was to expire a day later on Jan. 3, 1971.(16)

*Parliamentarian's Note:* Mr. Roth had been elected as a Senator from Delaware, his term to begin Jan. 3, 1971; the appointment to fill the vacancy in the 91st Congress had the effect of increasing his seniority in the 92d Congress.

## C. CAMPAIGN PRACTICES

### § 10. Regulation and Enforcement

The U.S. Constitution grants each House of Congress the power, under article I, section 5, to judge the elections and returns of its own Members. It also grants to Congress, under article I, section 4, the power to make or alter regulations for the time, place, and manner of holding elections.(17)

The Supreme Court has affirmed that the power of Congress to make regulations for holding elections extends to every phase of the election process, including campaign practices:

16. 116 CONG. REC. 44516, 91st Cong. 2d Sess.

17. For the constitutional provisions and comments thereon, see *House Rules and Manual* §§ 42–44, 46–51 (1973).

> It cannot be doubted that these comprehensive words [U.S. Const. art. I, § 4, clause 1] embraces authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and candidates, and making a publication of election returns; in short, to enact numerous requiements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.[18]

Until 1972, campaign practices in congressional elections were governed by the Corrupt Practices Act of 1925, as amended; the Federal Election Campaign Act of 1971 repealed the Corrupt Practices Act and established a new and comprehensive code for campaign practices and expenditures with provisions for investigations and enforcement.[19] The act required reports on campaign contributions and expenditures to be filed with the Clerk by candidates for election to the House and designated the Clerk as "supervisory officer" of the act in relation to House elections with duties as to investigations, enforcement, and referral to prosecutors of violations of the act. Because of the Clerk's role under the election statutes, a variety of civil actions have been brought against him in his official capacity, and the Clerk has been authorized to obtain counsel when necessary in relation to his statutory functions. The Federal Election Campaign Act Amendments of 1974 imposed new limitations on campaign contributions and expenditures, modified reporting requirements under the act, provided for public financing of Presidential nominating conventions and primary elections, and created a new Federal Election Commission to investigate and enforce compliance with the act, to render advisory opinions and to promulgate rules and regulations under the act. Under the 1974 amendments, the commission was composed of the Clerk of the House and Secretary of the Senate, as ex officio members without voting rights, and six members, two to be appointed by the Speaker upon the recommendations of the Majority and Minority Leaders of the House,

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**18.** *Smiley* v *Holme,* 285 U.S. 355, 366 (1932).

Congressional authority over election regulation and practices extends to the primary process. See *United States* v *Classic,* 313 U.S. 299 (1941), *United States* v *Wurzbach,* 280 U.S. 396 (1930).

**19.** Pub. L. No. 92–225, 86 Stat. 3, Feb. 7, 1972. See §§ 10.6–10.8, infra, for instances of civil actions brought against the Clerk.

two to be appointed by the President pro tempore upon the recommendations of the Majority and Minority Leaders of the Senate, and two to be appointed by the President; all nominees were subject to confirmation by both Houses of Congress.(20)

On Jan. 30, 1976, the U.S. Supreme Court handed down a decision in the case of *Buckley* v *Valeo*,(21) in which the constitutionality of the Federal Election Campaign Act Amendments was challenged on several grounds. The Court ruled that certain of the spending limitations imposed by the act violated the first amendment to the Constitution; the Court also found that the Federal Election Commission was prohibited from exercising all of the administrative and enforcement powers granted to it by the act, since the authority of the Speaker and the President pro tempore to appoint two members each to the commission violated U.S. Constitution, article II, section 2, clause 2, vesting in the President the power to nominate and to appoint, with the advice and consent of the Senate, officers of the United States. To remedy the constitutional infirmities of the 1974 act and to effect further modifications in the Election Campaign Act, the Congress passed and the President signed into law the Federal Election Campaign Act Amendments of 1976; that act provided that all six members of the Federal Election Commission be appointed by the President with the advice and consent of the Senate.(22) The 1976 amendments also provided a new procedure, not contained in the 1974 act, for the House to consider as a privileged matter a report of the appropriate House committee on a resolution disapproving certain regulations proposed by the commission on reporting requirements for candidates for election to the House; the 1974 act had made such regulations subject to a single-House veto but did not specify any procedure for House consideration of disapproval resolutions.(23)

**20.** Pub. L. No. 93–443, 88 Stat. 1263, Oct. 15, 1974. See § 10.11, infra, for the procedure of the House in receiving and confirming the nominations to the commission in 1975.

**21.** 424 U.S. 1 (1976); as indicated in the note to § 10.11, infra, the decision of the Court as to the powers of the commission was stayed for a time certain to allow Congress to consider and act on the matter.

**22.** Pub. L. No. 94–283, 90 Stat. 475, May 11. 1976.

**23.** See § 10.12, infra, for a discussion of congressional disapproval of commission regulations under the Election Campaign Act, as amended.

The functions of the Clerk under the 1974 and 1976 amendments to the Federal Election Campaign Act of 1971 differ from his functions both under the original act and under the Federal Corrupt Practices Act.

Under the Federal Corrupt Practices Act, candidates for the House were required to report to the Clerk, as were political committees which fell within the terms of the act, even if such committees existed to support senatorial or Presidential candidates.(24) Similarly, any person making expenditures greater than $50, other than by contribution to a political committee, had to file a statement disclosing the particulars with the Clerk, if such expenditures influenced the election of candidates in two or more states.(25)

Under the Federal Election Campaign Act of 1971, which designated the Clerk a "supervisory officer" with respect to House elections, the definition of committees supporting candidates was broadened, with the result that most of the intrastate and district committees previously reporting at the state level under the Federal Corrupt Practices Act had to file timely reports with the Clerk.(26) Moreover, all committees falling within the definition had to file a statement of organization and register with the Clerk.(27) The Clerk had jurisdiction over amendments to or withdrawals of registrations. Finally, the definition of an election was expanded to include primaries and runoff elections.(28)

In addition to the reports which committees and candidates were required to file at specified time intervals, the Clerk received reports of independent expenditures. Among other duties and functions of the Clerk were the following: to prescribe reporting and registration forms together with separate schedules, particularly for the reporting of committee debts and obligations; to make reports and registrations available for public inspection; to preserve all documents for a five-year period from the date of receipt; to conduct audits and field investigations; to receive complaints and to report any apparent violations of the act to the appropriate law enforcement authorities; and to prescribe rules and regulations for the performance of these duties.(1)

Under the 1974 amendments, signed Oct. 15, 1974, many functions of the Clerk were trans-

**24.** Pub. L. No. 506, Ch. 368, title III § 305, Feb. 28, 1925.

**25.** *Id.*, § 306.

**26.** Pub. L. No. 92–225, 86 Stat. 3, § 304(a), Feb. 7, 1972.

**27.** *Id.*, § 303(a).

**28.** *Id.*, § 301(a).

**1.** *Id.*, § 308.

ferred to the newly established Federal Election Commission. Although reports of House candidates and committees were still to be filed initially with the Clerk, independent expenditure reports were now required to be filed with the commission. The Clerk was required to cooperate with the commission in carrying out its duties under the act and to furnish such services and facilities as might be required. Any complaints filed with, or apparent violations found by, the Clerk were to be referred to the Federal Election Commission,[2] which had primary jurisdiction with respect to civil enforcement of the law. The Clerk continued to review registrations and reports filed so as to determine their completeness and accuracy, although responsibility for audits and field investigations was shifted to the staff of the Federal Election Commission.

Under the 1976 amendments, all complaints of possible violations are to be submitted directly to the Federal Election Commission, rather than the former practice whereby the Clerk referred apparent violations of the act to the commission.[3]

Other public laws bear on campaign practices, such as those prohibiting bribery and other unlawful acts.[4]

The use by an incumbent Member of his statutory allowances, in relation to campaigns, has been the subject of much discussion and litigation.[5] In the 93d Congress, a public law was enacted to clarify the use of the congressional frank, to prohibit the franking of campaign mail, and to limit the jurisdiction of courts to the review of decisions of a Special

**2.** Pub. L. No. 93–443, 88 Stat. 1263, § 314(a)(1)(B), Oct. 15, 1974.

**3.** Pub. L. No. 94–283, 90 Stat. 475 at 483, § 313, May 11, 1976.

**4.** See, for example, the following criminal statutes: 18 USC § 599 (prohibits candidate from promising employment); 18 USC § 602 (solicitation or receipt of political contributions from federal employees); 18 USC § 603 (solicitation of political contributions in federal building); 18 USC § 611 (solicitation of contributions from federal contractors); 18 USC § 608 (limitation on expenditure of personal funds); 18 USC § 610 (no contributions from corporations or labor unions); Pub. L. No. 92–225, §§ 301–311 (failing to file campaign fund reports).

**5.** For the allowances of a Member and their use, see Ch. 7, supra. For a compilation of court cases on the alleged use of the frank for campaign purposes, see Report of the Joint Committee on Congressional Operations Identifying Court Proceedings and Actions of Vital Interest to the Congress, Final Report for the 92d Congress, Dec. 1972.

Commission on Mailing Standards, which commission has power to investigate the use of the frank, whether related to campaign mail or to other types of mail.(6)

The Committee on House Administration has general jurisdiction over election practices and their regulation and obtained jurisdiction over campaign contributions in the 94th Congress.(7) The committee investigates contested elections and practices occurring in specific campaigns.(8)

The Committee on Standards of Official Conduct, created in the 90th Congress, has jurisdiction over financial disclosure requirements and, until the 94th Congress, over the regulation of campaign contributions.(9)

The states may also enact corrupt practices acts, and the Federal Election Campaign Act provides for reports to be filed with proper state officials, for each congressional candidate.(10)

## *Campaign Funding*

### § 10.1 In the 90th Congress, the rules of the House were amended to provide regulations governing the use and expenditure of campaign funds.

On Apr. 3, 1968,(11) the House agreed to House Resolution 1099, amending the rules of the House to establish, as new Rule XLIII, a Code of Conduct for Members, and for other purposes. Clauses 6 and 7 of the new rule related to campaign funds and contributions:

> 6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures. He shall expend no funds from his campaign account not attributable to bona fide campaign purposes.
>
> 7. A Member of the House of Representatives shall treat as campaign

**6.** Pub. L. No. 93–191, 87 Stat. 737, Dec. 18, 1973.

The act provides that the computed cost of franking shall not be considered as a campaign expenditure or contribution for the purpose of statutory limitations thereon. 87 Stat. 741.

**7.** *House Rules and Manual* § 693 (1973). The committee was created by the Legislative Reorganization Act of 1947 and absorbed the former Committee on Election of President, Vice President, and Representatives in Congress.

**8.** For select committees on campaign expenditures, see § 14, infra.

**9.** See § 10.5, infra.

**10.** Pub. L. No. 92–225, § 309.

The House or its committee has taken state corrupt practices acts into account in judging election contests; see § 11, infra.

**11.** 114 CONG. REC. 8802, 90th Cong. 2d Sess.

contributions all proceeds from testimonial dinners or other fund raising events if the sponsors of such affairs do not give clear notice in advance to the donors or participants that the proceeds are intended for other purposes.[12]

### *Committee Jurisdiction*

**§ 10.2 Where a Presidential legislative proposal amending the federal election laws included a title on income tax deductions for political contributions, that title was deleted in order that the Committee on House Administration could consider the bulk of the proposal and the Committee on Ways and Means could consider the tax proposal as a separate proposition.**

On May 26, 1966,[13] a Presidential communication, executive communication 2433, proposing a comprehensive amendment of the federal election laws, was referred to the Committee on House Administration. The proposal included amendments not only to the Federal Corrupt Practices Act but also to the Internal Revenue Code.

*Parliamentarian's Note:* It was agreed by House leaders that while most of the proposal fell within the jurisdiction of the Committee on House Administration, title VII of the bill, pertaining to income tax deductions for political contributions, was clearly within the jurisdiction of the Committee on Ways and Means. It was agreed that the latter committee would consider title VII as a separate proposition and that the Committee on House Administration would delete that title from the proposal before introducing the bill on the floor of the House.

**§ 10.3 In the 74th Congress, bills relating to election offenses and providing penalties therefor came within the jurisdiction of the Committee on the Judiciary and not the (former) Committee on Election of President, Vice President, and Representatives in Congress.**

On Feb. 19, 1936,[14] Mr. Thomas Fletcher Brooks, of Ohio, addressed the House in order to ask

**12.** The resolution also provided for a financial disclosure requirement, in Rule XLIV, not applicable to campaign receipts. See *House Rules and Manual* § 940 (1973). Disclosure of campaign receipts and expenses are required under the Federal Election Campaign Act.

**13.** 112 CONG. REC. 11686, 11687, 89th Cong. 2d Sess.

**14.** 80 CONG. REC. 2360, 74th Cong. 2d Sess.

unanimous consent that a bill relating to offenses in elections and providing penalties therefore, which was formerly referred to the Committee on Election of President, Vice President, and Representatives in Congress, be rereferred to the Committee on the Judiciary. Mr. Fletcher stated that he had talked with the chairmen of both committees. There was no objection to the request.[15]

### § 10.4 The Committee on the Judiciary and not the Committee on Military Affairs had jurisdiction of bills to repeal the provisions of the War Disputes Act relating to political contributions by labor organizations.

On May 11, 1944,[16] Mr. Andrew J. May, of Kentucky, who had introduced a bill to repeal provisions of the War Disputes Act relating to political contributions by labor organizations, addressed the House in relation to the committee jurisdiction of the bill. The bill had originally been referred to the House Committee on Military Affairs, but Mr. May obtained unanimous consent that the bill be rereferred to the Committee on the Judiciary.

### § 10.5 In the 91st Congress, the House rules were amended to confer on the Committee on Standards of Official Conduct jurisdiction over the raising, reporting, and use of campaign contributions for House candidates.

On July 8, 1970,[17] the Committee on Rules reported House Resolution 1031, amending the rules of the House in relation to the jurisdiction of the Committee on Standards of Official Conduct over campaign contributions. The resolution, as passed by the House, conferred on that committee jurisdiction over the raising, reporting, and use of campaign contributions for candidates for the House. The committee was also given jurisdiction to investigate such matters and to report findings to the House.

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**15.** The former Committee on Election of President, Vice President, and Representatives in Congress was absorbed by the Committee on House Administration, created by the Legislative Reorganization Act of 1947. See *House Rules and Manual* § 694 (1973).

**16.** 90 CONG. REC. 4323, 78th Cong. 2d Sess.

**17.** 116 CONG. REC. 23136–41, 91st Cong. 2d Sess.

This jurisdiction was transferred to the Committee on House Administration in the 94th Congress (H. Res. 5, Jan. 14, 1975).

### *Clerk's Role Under Election Campaign Act*

### § 10.6 A class action was brought against the Clerk claiming that he had failed to comply with the Federal Election Campaign Act of 1971 and challenging the price of copies of reports filed thereunder.

On May 2, 1972, Speaker Carl Albert, of Oklahoma, laid before the House a communication from the Clerk, advising the House that he had been named as defendant in a court action instituted by Common Cause, seeking: (1) a declaratory judgment that the Clerk had failed to comply with the provisions of the Federal Election Campaign Act of 1971; and (2) a restraining order to prohibit the Clerk from continuing a price increase for copies of reports filed under the act and from prohibiting the plaintiff from using its own duplicating equipment.[18]

### § 10.7 An action was brought in which the plaintiff alleged that the Clerk of the House and the Secretary of the Senate had failed to take action against the practice known as "earmarking" political campaign contributions in violation of the Federal Election Campaign Act of 1971.

In an action brought by Common Cause against the Clerk of the House and the Secretary of the Senate,[19] the plaintiffs alleged that the defendants "unlawfully" refused "to take action against certain practices that insulate candidates from associating with their actual contributors." The plaintiffs characterized the practice of "earmarking" as one in which, instead of giving directly to the candidate, the contributor gives his money to an intermediary political committee which supports a number of candidates, with the informal but clearcut agreement that the intermediary committee will pass the gift on to the candidate named by the original donor.

The plaintiffs asserted that this practice violated the Federal Elec-

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**18.** 118 CONG. REC. 15311, 92d Cong. 2d Sess.

For the court opinion in the suit against the Clerk, see *Common Cause* v *Jennings,* Civil Action 842–72 (D.C. Cir. 1972). The U.S. District Court entered a restraining order precluding any increase in the copying cost of 10 cents per page. (The Committee on House Administration had ordered the Clerk to raise the price to $1 per page.) The District Court action was affirmed by the U.S. Court of Appeals for the District of Columbia without opinion on Dec. 21, 1973.

**19.** See *Common Cause* v *Jennngs,* (D.D.C. No. 2379–72).

tion Campaign Act, section 310, which stated "No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person."

The District Court denied the defendant's motion to dismiss on Mar. 20, 1973. The parties, on May 13, 1974, stipulated that the case be dismissed without prejudice and that all designated, earmarked contributions should be reported as such under section 304 together with the details of the earmarking.

### *Clerk Authorized to Obtain Counsel*

**§ 10.8 The Speaker laid before the House a communication from the Clerk, informing the House of the receipt of replies from the Department of Justice and the United States Attorney for the District of Columbia in which they agreed to furnish representation for the Clerk in a civil action relating to the enforcement of certain election campaign statutes unless a "divergence of interest" should develop between the positions of the Clerk and the Justice Department.**

On Mar. 15, 1972,[20] Speaker Carl Albert, of Oklahoma, laid before the House various communications from the Clerk of the House relative to a case later to become known as *Nader* v *Kleindienst*. This case was a class action based on the Federal Corrupt Practices Act. The plaintiffs sought enforcement of the act, or the appointment of special prosecutors, and the termination of the alleged Justice Department policy to only prosecute under the act if so requested by the Clerk of the House or Secretary of the Senate.

*Parliamentarian's Note:* On May 3, 1972, the Clerk received a letter from the Justice Department stating that a "divergence of interest" had developed between the positions of the Clerk and the Justice Department and requesting the Clerk to obtain other counsel. On May 3, the House adopted House Resolution 955, authorizing the Clerk to obtain other counsel in cases brought against him relating to the Corrupt Practices Act and the Federal Election Campaign Act.[21] (A similar resolution

**20.** 118 CONG. REC. 8470, 92d Cong. 2d Sess.

**21.** For the communication from the Clerk advising the House of the original summons, see 118 CONG. REC. 5024, 92d Cong. 2d Sess., Feb. 22, 1972.

adopted in the 93d Congress, House Resolution 92, Jan. 6, 1973, was later made permanent law by Public Law No. 93–145, 87 Stat. 527.)

The United States District Court for the District of Columbia dismissed the complaint as to the Clerk of the House and Secretary of the Senate.(22)

### *Suit Testing Applicability of Campaign Act*

**§ 10.9 The Speaker laid before the House a communication from the Clerk, advising that he had been served with a summons and complaint in a civil action pending in a federal court relating to the applicability of the Federal Election Campaign Act of 1971 to a political advertisement prepared by the American Civil Liberties Union.**

On Oct. 5, 1972,(23) Speaker Carl Albert, of Oklahoma, laid before the House a communication from the Clerk of the House relative to *American Civil Liberties Union* v *Jennings.*

In the case, the Clerk, among others, was named in a challenge to the constitutionality of the Federal Election Campaign Act of 1971. The case arose from the refusal of a newspaper to print an allegedly "political" advertisement prepared by the ACLU, where the advertisement contained the name of a Congressman. The U.S. District Court ruled that the statutory language in question did apply to the activities of the ACLU, but "only to committees soliciting contributions or making expenditures" for candidates.(1)

### *Clerk Authorized to Investigate Violations*

**§ 10.10 The House agreed to a privileged resolution, reported from the Committee on Rules, establishing a special committee to investigate and report on campaign expenditures and practices by candidates for the House, and authorizing the special committee and the Clerk of the House to jointly investigate alleged violations of**

**22.** See *Nader* v *Kleindienst,* 375 F Supp 1138 (D.D.C. 1972), aff'd, 497 F2d 676.

**23.** 118 CONG. REC. 34040, 92d Cong. 2d Sess.

**1.** See 366 F Supp 1041 (D.D.C. 1972j. See also *United States* v *The National Committee for Impeachment,* 469 F2d 1135 (2d Cir. Oct. 30, 1972), wherein it was held that an organization printing an advertisement was not a "political committee" required to file statements and reports under the Federal Election Campaign Act of 1971.

**the Federal Election Campaign Act of 1971.**

On Mar. 15, 1973,[2] Mr. Richard Bolling, of Missouri, called up, by direction of the Committee on Rules, House Resolution 279 as privileged. The resolution created a special or select committee to investigate campaign expenditures.

The resolution authorized joint investigations by the select committee and by the Clerk of the House, in order to permit the Clerk to take advantage of the select committee's subpena power in carrying out his duties under the Federal Election Campaign Act of 1971:

> . . . (8) The Clerk of the House of Representatives is authorized and directed when carrying out assigned responsibilities under the Federal Election Campaign Act of 1971 that prior to taking enforcement action thereunder, to initiate a request for consultation with and advice from the committee, whenever, at his discretion, election campaign matters arise that are included within sections (1) through (6) above and may affect the interests of the House of Representatives.
>
> (9) The committee is authorized and directed to consult with, advise, and act in a timely manner upon specific requests of the Clerk of the House of Representatives either when he is so acting on his own motion or upon a written complaint made to the Clerk of the House under oath setting forth allegations of fact under the Federal Campaign Act of 1971. The committee, or a duly authorized subcommittee thereof, when acting upon the requests of the Clerk shall consult with him, shall act jointly with him, and shall jointly investigate such charges as though it were acting on its own motion, unless, after a hearing upon such complaint, the committee, or a duly authorized subcommittee thereof, may be either in executive or in public sessions, but hearings before the committee when acting jointly shall be public and all order and decisions and advice given to the Clerk of the House of Representatives by the committee or a duly authorized subcommittee thereof shall be public.
>
> For the purpose of this resolution, the committee, or any duly authorized subcommittee thereof, is authorized to hold such public hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods during the period from March 1, 1973 through June 6, 1973, of the Ninety-third Congress, to employ such attorneys, experts, clerical, and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to administer such oaths, and to take such testimony as it deems advisable. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by such chairman, and may be served by any person designated by any such chairman or member.
>
> (10) The committee is authorized and directed, when acting on its own

**2.** 119 CONG. REC. 7957, 7958, 93d Cong. 1st Sess.

motion or upon a complaint made to the committee, to report promptly any and all violations of any Federal or State statutes in connection with the matters and things mentioned herein to the Attorney General of the United States in order that he may take such official action as may be proper. The committee or a duly authorized subcommittee thereof is authorized and directed when acting upon the specific request of the Clerk of the House to render advice promptly in order to give the Clerk of the House of Representatives the prior benefits of its advice and in order that he may then take such official action under the Federal Election Campaign Act of 1971 as the Clerk of the House ofRepresentatives deems to be proper.[3]

*Parliamentarian's Note:* This was the last occasion on which a select committee to investigate campaign expenditures was established. The Committee on House Administration, with jurisdiction over campaign practices, also was given jurisdiction over campaign contributions in the 94th Congress (H. Res. 5, 94th Congress). And in the 94th Congress, all standing committees, including the Committee on House Administration, were given the power to issue subpenas whether or not the House was in session (H. Res. 988, 93d Congress, effective Jan. 3, 1975).

### *Federal Election Commission, Composition*

### § 10.11 Under the Federal Election Campaign Act Amendments of 1974, establishing a Federal Election Commission, both the House and Senate were required to confirm the nominations of six members of the commission, two to be appointed by the Speaker on the recommendations of the Majority and Minority Leaders of the House, two to be appointed by the President pro tempore of the Senate on the recommendations of the Majority and Minority Leaders of the Senate, and two to be appointed by the President.

On Jan. 29, 1975,[4] Speaker Carl Albert, of Oklahoma, laid before the House a communication from the Majority Leader Thomas P. O'Neill, Jr., of Massachusetts, and a communication from Minority Leader John J. Rhodes, of Arizona, each recommending a nominee for appointment by the Speak-

**3.** See also H. Res. 131, 93d Cong. 1st Sess., extending the Special Committee to Investigate Campaign Expenditures created in the 92d Congress, to enable it to assist the Clerk of the House in investigating new allegations of violations of federal election laws.

**4.** 121 CONG. REC. 1680, 94th Cong. 1st Sess.

er to serve as members of the Federal Election Commission; the recommendations were submitted pursuant to section 301(B) of Public Law No. 93–433, Federal Election Campaign Act Amendments of 1974, creating the commission and providing for two appointments by the Speaker upon recommendations of the Majority and Minority Leaders of the House, two appointments by the President pro tempore upon recommendations of the Majority and Minority Leaders of the Senate, and two appointments by the President. The Speaker referred the communications to the Committee on House Administration, which had considered and reported the public law in question. On Mar. 6, 1975,[5] the Speaker laid before the House a communication from the Secretary of the Senate transmitting the recommendations of the Majority Leader of the Senate, Mike Mansfield, of Montana, and the Minority Leader of the Senate, Hugh Scott, of Pennsylvania, for appointments to the Federal Election Commission by the President pro tempore of the Senate. The communication was referred to the Committee on House Administration. And on Mar. 10, 1975,[6] the Speaker laid before the House two messages from President Gerald R. Ford nominating two persons for his appointments to the commission; the messages were referred to the Committee on House Administration.

On Mar. 19, 1975,[7] Mr. Wayne L. Hays, of Ohio, called up by direction of the Committee on House Administration House Resolution 314, confirming the six nominations for appointment to the commission, and asked unanimous consent for the immediate consideration of the resolution (the resolution had no privileged status under the rules of the House). The House agreed to consider the resolution and after debate agreed thereto, voting separately on each nominee since a demand had been made for a division of the question. The Senate later confirmed all six nominees and the Speaker, the President pro tempore of the Senate, and the President made their various appointments.

*Parliamentarian's Note:* The Federal Election Campaign Act Amendments of 1976, enacted May 11, 1976, as Public Law No. 94–283, deleted from the Federal Election Campaign Act the provisions for appointments to the com-

**5.** 121 CONG. REC. 5537, 5538, 94th Cong. 1st Sess.

**6.** 121 CONG. REC. 5870, 94th Cong. 1st Sess.

**7.** 121 CONG. REC. 7344–54, 94th Cong. 1st Sess.

mission by the Speaker and President pro tempore and joint House-Senate confirmation of all nominees, and provided instead for six members to be appointed by the President with the advice and consent of the Senate (with the Clerk of the House and Secretary of the Senate to serve ex officio without voting rights, as in the 1974 amendments). The United States Supreme Court had held, in the case of *Buckley* v *Valeo,* 424 U.S. 1 (1976) (decided Jan. 30, 1976), that the Federal Election Commission could not exercise the full range of administrative and enforcement powers granted to it in the 1976 amendments, since the method of selecting members of the commission provided in the 1976 act violated the "Appointment Clause" of the Constitution, vesting in the President the sole power to appoint, with the advice and consent of the Senate, officers of the United States (U.S. Const. art. II, § 2, clause 2). The Supreme Court had stayed that portion of its ruling for 50 days in order to avoid interrupting enforcement of the Election Campaign Act while the Congress considered whether remedial legislation was necessary (see H. Rept. No. 94–917, Mar. 17, 1976, 94th Cong. 2d Sess., a report by the Committee on House Administration on H.R. 12406, the House counterpart to S. 3065 which was enacted as the Federal Election Campaign Act Amendments of 1976).

### *Federal Election Commission, Congressional Disapproval of Regulations*

### § 10.12 The Federal Election Campaign Act, as amended, allows the House or the Senate, whichever is appropriate, to disapprove certain regulations proposed by the Federal Election Commission dealing with campaign reports and statements required of candidates for the House or Senate, and allows both Houses to disapprove reports and statements required of Presidential candidates.

The Federal Election Campaign Act Amendments of 1974, Public Law No. 93–443, section 209, amended the act to require the Federal Election Commission to transmit to the House or Senate, whichever is appropriate, proposed regulations dealing with reporting requirements for candidates for the House in question. Such regulations may be promulgated by the commission if the House or Senate, as the case may be, does not disapprove such regulations within 30 legislative days.

In the case of proposed regulations dealing with reporting requirements for Presidential candidates, both the House and the Senate may disapprove.

On Oct. 22, 1975,[8] Mr. John Young, of Texas, called up by direction of the Committee on Rules House Resolution 800, providing for the consideration in the House of House Resolution 780, reported from the Committee on House Administration and disapproving a regulation proposed by the Federal Election Commission; a special order from the Committee on Rules was necessary since the Federal Election Campaign Act Amendments of 1974 did not provide a privileged procedure for considering such disapproval resolutions in the House. The House adopted the special order and then adopted the disapproval resolution. (The disapproval resolution had previously failed of passage under suspension of the rules on Oct. 20.)

The Federal Election Campaign Act Amendments of 1976, Public Law No. 94–283, section 110(b), amended the act to provide that whenever a committee of the House reports a disapproval resolution provided for by the act, "it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to." The 1976 law a]so redefined a "rule or regulation" which could be disapproved as a "provision or series of interrelated provisions stating a single separable rule of law."

## § 11. Campaign Practices and Contested Elections

[Note: For specific election contests, see chapter 9, infra.]

In judging contested elections, the Committee on House Administration or its subcommittee on elections, and then the House, take into account alleged violations of federal or state election campaign laws and the effect of such violations on the outcome of the election. Such statutes are not binding on the House in exercising its function of judging the elections of its Members, since the Constitution gives the House the sole power to so judge.[9]

**8.** 121 CONG. REC. 33662, 33663, 94th Cong. 1st Sess.

**9.** See *House Rules and Manual* §§ 47–50 (comments to U.S. Const. art. I, § 5, clause 1) (1973).